

# ARMY CORPS OF ENGINEERS AMERICAN INDIAN/ALASKA NATIVE POLICY

Application to Project Planning, Construction &  
Operations

# Facts About Tribes

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- ❑ **Federally-recognized Tribes are sovereign Nations**
- ❑ **Federal government has a legal relationship (Trust responsibility) with each Tribe based on treaties, statutes, court decisions & executive orders**
- ❑ **Tribes are culturally unique**
- ❑ **Tribes respect the military culture, yet some members still mistrust us since it was the Army who removed them from their lands**
- ❑ **Tribes do not get “hand outs” – the government agreed to certain services in exchange for lands**
- ❑ **Highest rate of enlistment into the Armed Services**

# Corps Policy Development

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- **Tribal Policy Task Force (94, 96, 98, 99, 00)**
  - **1995 Listening Sessions (2 vol report)**
- **Assessment of Corps / Tribal Relations 96**
- **Tribal Policy Principles Feb 1998 (Policy Guidance Letter #57)**
- **Indian Sacred Sites - Policy Guidance Letter #58**
- **Established HQ Tribal Desk, 2003**
- **NWD Access Guidance, 2004**
- **Partnering with Indian Nations training began 2005**
- **Tribal Nations CoP, 2006**
- **Draft Consultation Guidelines, 2008**

# Why do we have a “Policy”?

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- **Cultural impacts:**
  - ▣ **Communities have been displaced & impacted**
  - ▣ **Traditional resource areas lost & degraded**
  - ▣ **Sacred sites lost & degraded**
  - ▣ **Tribal/trust resources may include:**
    - **Topographical features (mountains, rivers, lakes, springs, deserts, trees, caves, rock shelters, routes to sacred places)**
    - **Fish and wildlife species, medicinal or sacred plants**
    - **Archeological sites, sacred sites, ceremonial sites, burial grounds, collections of artifacts**
    - **Petroglyphs and pictographs**
    - **Resource gathering and processing sites (e.g., pinyon groves, caribou migration routes)**

# What Does the Corps Policy Involve?

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- Indian Lands
  - ▣ Reservations (46.2 M acres)
  - ▣ Allotted lands (8.9 M acres)
  - ▣ Not ANCSA corporation lands [Alaska Native Claims Settlement Act]
- Off-reservation reserved or treaty rights – hunting and fishing rights
- Tribal rights – access to sacred sites
- Other legal obligations – pre-decisional consultation

# PGL #57: Tribal Policy Principles (Feb 98)

- **Tribal sovereignty**
- **Trust responsibility**
- **Government-to-government relations**
- **Pre-Decisional consultation**
- **Self-reliance, capacity building, growth**
- **Natural and cultural resource management and protection**

*Note: These principles derive from the unique historical and political relationship between the federal government and American Indians/Alaska Natives.*

*The Policy Principles were reaffirmed by the Chief of Engineers in 2010*

# Corps Affects Tribal Lands & Resources

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- **Projects constructed/operated by Corps (~30% of Corps Civil Works projects affect directly treaty and trust resources of ~20% of Tribes in the lower 48 States)**
- **Projects constructed by the Corps, operated and maintained by non-Federal sponsors**
- **Activities authorized by the Regulatory Program**
  - **Rivers and Harbors Act of 1899, Sec 10 (structures in navigable waters)**
  - **Clean Water Act Sec. 404 (fill in waters of the U.S., including wetlands)**
- **Support for Others (WRDA 1992) (now “Interagency and International Services”)**
- **Military Projects**
  - **(installations, housing, airports, clearing ordnance, HTRW)**

# The Tribal Program is Growing

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- **Tribal Nations Community of Practice**
- **CoP Charter establishes goals & objectives**
- **Tribal Liaison at HQ has access to Army leaders**
- **Leaders take Tribal responsibilities seriously**
- **Education a major thrust, cross-cultural learning goes both directions**
- **It all begins with trust and respect, one person at a time**
- **Tribal Liaisons in ~8 districts and POCs in 30**



# Water Resources Development Act of 2000, Section 208

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- **Discretionary authority to rebury human remains on Corps/Federal lands**
- **Corps Commanders must identify suitable lands for this purpose**
- **Recovery, preparation and reburial costs 100% Federal expense**
- **Discretional authority to transfer those lands to Tribes or use as cemeteries**

# PGL # 58: Indian Sacred Sites

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- ❑ **Implements EO 13007 (May 1996)**
- ❑ **Accommodates access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners**
- ❑ **Avoids adversely affecting physical integrity of sacred sites, maintain confidentiality**
- ❑ **Maintains confidentiality of information**
- ❑ **Ceremonial use may include collection of plants, clearing of habitat, gathering of animal parts or feathers, and other resource consuming activities**

# NWD Tribal Land Access Policy

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- **ER 1130-2-550  
Recreation Authorization**
- **The District Commander may waive day fees for boating, swimming beaches, and other recreational services for Tribal members**
- **Special use permits should be issued w/o charge to Tribal members for ceremonial purposes**
  - ▣ **Requests must be submitted by the Tribal Government or coordinator that has been authorized by the Tribe to the Commander or their Representative**

# Water Resources Development Act of 2000, Section 203

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- **Tribal Partnership Program**
- **Just renewed – Sec. 2011, WRDA 2007**
- **Focused on Tribal water and related land resource needs**
- **Natural and cultural resource projects (acknowledges they are inextricably linked)**
- **Credit for traditional cultural knowledge**
  - ▣ **In-kind contributions allowed**
- **Ability to Pay (cost sharing reduction once rulemaking has been completed)**

# Water Resources Development Act of 1974, Sec. 22

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- **Planning Assistance to Tribes and States, allows for technical assistance cost shared 50/50**
  - ▣ **Comprehensive water and related land resources planning - projects in 14 Corps Districts**
  - ▣ **Over 100 agreements with Tribes, 30 Tribes (~ 5% of Federally-recognized Tribes)**
  - ▣ **\$3.3 million since 1991 - 10% of annual PAS budget (average)**

# Tribes Are Partners

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- **Tribal interests are not restricted to cultural resource issues**
- **Tribes are and can be sponsors & partners for water resources projects**
- **Tribes can play important roles in planning, operating and maintaining projects and programs**
- **Tribes embody a vast pool of untapped talent and opportunities**
- **Working with Tribes helps fulfill our Trust responsibilities *and* carry out the Corps mission as well**

# Consultation Considerations

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- DoD threshold = “may have the potential to significantly affect”
- Indian Nations are not simply stakeholders in the Government-to-Government context
- Collaborative & ongoing process, may be event, project, proposal, or program driven
- Local protocols can facilitate staff-to-staff communication
- Based upon trust and respect
- Education both directions – continuing education

# What is Meaningful Consultation?

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- Be pre-decisional: no more “done deals”
- Work toward consensus, but ultimately Corps makes decisions
- Tribes are *not* just another stakeholder, user group, or the “public”
  - ▣ Protect Indian rights from adverse impacts
  - ▣ Consider cultural factors and perspectives
  - ▣ Beyond NEPA and NHPA



# Missouri River System Example

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- **History:** 1944 - Corps granted authority over all MO River dams.
  - Fort Randall Dam, begun in 1946, flooded 22,000 acres of Sioux land and displaced 136 families
  - 1944-1966 - Flooding & disruption continued throughout construction of all 6 dams. 8 Tribes & 900 families were displaced
- **Challenges** - 6,000+ shoreline miles under Corps mg't contain ~5,000 archaeological and sacred sites
  - erosion, encroachment, looting and vandalism, insufficient funds for stabilization and protection (\$3 million annually for a \$82+ million need)
- **Progress** - Section 106 Programmatic Agreement signed April 2004 (Corps, ACHP, 4 SHPOs, 27 Tribes, National Trust for Historic Preservation, BIA)
  - Activities will take years to complete because it is so comprehensive
  - Reviewed annually

# Program Challenges

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- ❑ **Funding vs. needs & ability to pay in Indian Country**
- ❑ **Visibility/accountability at leadership levels**
- ❑ **Leadership changes (both Corps and Tribal)**
- ❑ **Identify/remove procedural impediments**
- ❑ **Identify sources of funding**
- ❑ **Improve consistency of approach**
- ❑ **Working with different cultures**
- ❑ **Hiring more Native employees**
- ❑ **Following through on promises, agreements**

# What to Do!!

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- LISTEN
- LEARN
- COMMUNICATE
- ACT
- ASSESS
- REPEAT ALL

# Questions???

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